

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4976 OF 2021

Ramesh Shankarrao Bhoite

..Petitioner

Versus

Santosh Ankush Bhoite and Ors.

..Respondents

Mr. Vinod Kashid, for the Petitioner.

Mr. Dilip Bodake a/w Sharad T. Bhosale, for the Respondent No.1.

CORAM : NITIN W. SAMBRE, J.

DATE : 1st MARCH, 2022

PC.

1. Petitioner initiated RCS No.151 of 2020 seeking partition and separate possession to the extent of 1/5th share in the suit property. Alleging possession over part of the suit property, where he has constructed house through defendant No.1, prayer for grant of temporary injunction vide Exh.5 was rejected on 07.09.2020 which order was confirmed by the Appellate Court on 11th January, 2021. As such, this petition.

2. After having heard for the respective counsels on the entire issues, what can be noticed is the present respondent/defendant No.1 has initiated RCS No.265 of 2019 against the present petitioner for grant of injunction thereby restraining the petitioner from interfering with his possession over the suit property. It is the case of both the parties that they are in

possession of the same property out of land Gat No.70. Petitioner claims that he has constructed house through defendant No.1 and has paid amount. He has drawn support from the entries from the bank account so as to establish the same. In addition, the petitioner has also relied on the document executed by one Prakash Rathod in favour of the present petitioner, wherein he has agreed for carrying out work of construction. The fact remains that the rival claims of the parties are pending before the very same Court in two different suits. In the orders impugned wherein temporary injunction is rejected, said issue viz. effect of suit pleadings in rival suit and reply/written statement are not considered. The Court below has failed to consider the effect of the account entries of the respondent/defendant No.1, the effect of agreement of construction entered into between contractor and the petitioner and the effect of same over the rival claims.

3. In the aforesaid background, both the orders i.e. 11th January, 2021 passed by the District Judge, Satara in Misc. Civil Appeal No.97 of 2020 and order dated 7th September, 2020 passed below Exh.5 by the Court of Civil Judge Junior Division, Koregaon are hereby quashed and set aside.

4. Considering the rival claims in the aforesaid both the suits i.e. RCS No.151 of 2020 and RCS 265 of 2019, it is directed that both the suits be tagged and tried together.

5. I am informed by Mr. Dilip Bodake, learned counsel for the respondent/plaintiff in RCS No.265 of 2019 that prayer of the said respondent/plaintiff in the said suit for grant of temporary injunction is pending adjudication. As such, it is directed that both the suits be tagged together and the application for grant of temporary injunction in both the suits be decided afresh.

6. As such, petition stands disposed of.

[NITIN W. SAMBRE, J.]